

1
2 **UNITED STATES DISTRICT COURT**
3 **WESTERN DISTRICT OF WASHINGTON**
4 **TACOMA DIVISION**

5
6 WILL CO. LTD. a limited liability
7 company organized under the laws of
8 Japan,

9 Plaintiff,

10 vs.

11 KAM KEUNG FUNG, aka 馮錦強, aka
12 FUNG KAM KEUNG, aka KEUNG
13 KAM FUNG, aka KAM-KEUNG FUNG,
14 aka KEVIN FUNG, an individual;
15 FELLOW SHINE GROUP LIMITED, a
16 foreign company, and DOES 1-20, d/b/a
17 AVGLE.COM

18 Defendants.

19 **DECLARATION OF MING CHUNG WU, ON BEHALF OF FELLOW SHINE**
20 **GROUP LIMITED, IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS**

21 I, Ming Chung Wu, declare and state as follows:

22 1. My name is Ming Chung Wu. I am over the age of 18 years. I am a
23 Director of Defendant Fellow Shine Group Limited (“FSG”), a company registered in the
24 British Virgin Islands. FSG is the owner and operator of the website “Avgle.com.” I
25 make this declaration on behalf of FSG, based upon personal knowledge and, where
26 applicable, my consultation with other FSG personnel and my review of business records.
27 All statements contained in this declaration are true and correct to the best of my
28 knowledge. If called as a witness, I could and would testify as to the facts set forth in this
29 declaration.

FSG and the Avgle.com Website

2. FSG is the owner and operator of the website Avgle.com.

3. FSG operates from, and is completely based out of, Taiwan (formally known as the Republic of China). All work that FSG does in respect to operating Avgle.com is done out of Taiwan.

4. Avgle.com is a website that displays user-generated and uploaded adult videos. Neither FSG nor Avgle.com create or upload any of the videos on Avgle.com, rather, all videos on Avgle.com are uploaded by visitors to the website.

5. As of November 30, 2020, there were 460,722 videos uploaded to Avgle.com.

6. The vast majority of the videos have titles that are written in the Japanese alphabet, and, I believe that the vast majority of the videos are in Japanese as well.

7. The allegedly infringing files referenced in the Complaint in this matter are user generated content – that is, content that was uploaded by users.

8. FSG did not upload the allegedly infringing files referenced in the Complaint in this matter; FSG did not direct anyone to upload the files; nor does FSG have any knowledge that anyone on behalf of FSG or Avgle.com uploaded the allegedly infringing files referenced in the Complaint.

9. FSG does not have any commercial relationships with any of the users of Avgle.com and users are not paid for uploading any videos.

1 10. The Avgle.com website is not “scraping” user information or videos from
2 the websites of other companies.

3 **FSG’s Lack of Contacts with the United States and Washington**

4 11. The servers for the Avgle.com website that store all the files displayed on
5 the Avgle.com website (including the allegedly infringing files) are located in the
6 Netherlands, and the servers have been located in the Netherlands since the launch of
7 Avgle.com.

8 12. The Avgle.com website is operated wholly outside of the United States. It
9 is operated in and from Taiwan, while some contracting work for Avgle.com is done
10 from Hong Kong.

11 13. The hosting company that presently hosts the Avgle.com website is
12 Novogara BV, which is located in Amsterdam, Netherlands. Novogara BV has hosted
13 Avgle.com since July 2018, and before that, another company in the Netherlands was the
14 hosting company for Avgle.com since Avgle.com launched.

15 14. A programmer, on behalf of FSG, and from the programmer’s workspace in
16 Hong Kong, obtained Novogara BV’s hosting services as described in the preceding
17 paragraph.

18 15. Avgle.com utilizes Cloudflare.com (“Cloudflare”) for domain name
19 resolution services and DDoS (distributed denial of services attack) protection. The
20 service provided by Cloudflare is automatic and was obtained on behalf of FSG by a
21 third-party developer accessing Cloudflare’s self-service website from Hong Kong. To
22

1 my knowledge, Cloudflare does not provide an account manager for Avgle.com's
2 account. FSG uses Cloudflare's services for Avgle.com's worldwide use (the vast
3 majority of which is related to users outside of the United States). To the extent that
4 Cloudflare uses US servers in respect to Avgle.com, it is not at the direction for FSG, and
5 rather must be the result of Cloudflare's own internal deliberation or processes.

6 16. On behalf of FSG, a programmer, out of Hong Kong, registered Avgle.com
7 with Cloudflare for the above referenced services. This programmer obtained these
8 services using Cloudflare's self-service website and provides all maintenance in respect
9 to the DNS from Hong Kong.

10 17. The Terms and Conditions for Avgle.com do not, and have never, stated
11 that they are governed by and construed under the laws of Washington and/or the United
12 States.

13 18. FSG has not contracted (either directly or through brokers) with United
14 States advertisers for the Avgle.com website.

15 19. FSG has a direct contract with only one advertising broker, Tiger Media
16 Inc. d/b/a JuicyAds. Tiger Media Inc. is a Canadian corporation registered in the
17 province of Saskatchewan.

18 20. FSG does not have employees who regularly travel to the United States in
19 general, or Washington in particular, to conduct business.

20 21. FSG does not have any employees in the United States (including
21 Washington).

1 22. FSG does not have a bank account in the United States (including
2 Washington).

3 23. FSG has never owned or leased real estate in the United States (including
4 Washington).

5 24. FSG has never had a telephone number in the United States (including
6 Washington).

7 25. FSG has never paid taxes in, or to, the United States (or Washington).

8 26. FSG does not have, and never has had, an agent for service of process in
9 the United States.

10 27. FSG does not contract (nor has ever contracted) with Washington based
11 companies or individuals to deliver content for the Avgle.com website.

12 28. FSG does not specifically target Internet users in the United States
13 (including Washington) for the Avgle.com website.

14 29. To the extent that it could even do so, FSG does not aim the Avgle.com
15 website at any particular country, but rather the website is aimed at the entire world of
16 Internet users.

17 30. Avgle.com provides the option for users to choose from one of twenty-five
18 (25) different languages on which to view its site, including Japanese, Chinese, French,
19 Spanish, and Russian.

20 31. Avgle.com uses a website template and source code provided by
21 adultvideoscript.com (“AVS”) to create the general layout of its website. According to
22

1 its website, AVS has offices in Bucharest, Romania. FSG's third party developer,
2 Awesapp Ltd., obtained this template from AVS when operating online from his
3 workspace in Hong Kong. At the time that the developer used AVS to create the general
4 layout of its website, AVS only offered an English language version of the website
5 template. The AVS template contained the links to "DMCA" and "2257" found at the
6 bottom of the Avgle.com site.

7 32. Avgle.com is free to use. Accordingly, no users from the United States
8 (including in Washington), or anywhere else for that matter, make any payments to FSG
9 for using Avgle.com or for viewing any videos therein.

10 **Advertisements on the Websites**

11 33. All revenue derived from Avgle.com comes from advertisements.

12 34. The vast majority of Avgle.com's advertisements come from FSG's
13 relationship with a single advertising broker, Tiger Media, Inc. d/b/a JuicyAds, a
14 Canadian corporation registered in Saskatchewan ("JuicyAds"). FSG does not have any
15 direct relationship with the end-advertisers (the advertisers whose ads appear on
16 Avgle.com) that are acquired by JuicyAds. Instead, JuicyAds has the direct relationship
17 with these end-advertisers.

18 35. A programmer located in Hong Kong entered into the contract for
19 advertising brokerage with JuicyAds on behalf of FSG.

20 36. Avgle.com makes available to the broker "space" on Avgle.com, and the
21 broker then sells that spaces as it sees fit to its advertiser clients. An advertiser buys
22

1 (from the broker) the right to display whatever advertisements it chooses in the space
2 provided on Avgle.com as long as it complies with law and the broker's rules.

3 37. FSG does not cause any specific advertisements to be directed to visitors
4 from specific locations (such as Washington or the United States).

5 38. However, advertising brokers, or their advertisers, might themselves be
6 interested in only serving advertisements to specific blocks of countries or to show
7 specific advertisements in specific places. In other words, although it is possible for an
8 advertiser to have its advertisements be targeted to viewers in a specific country or an
9 even more limited geographic area, any "geolocation" or "geo-targeting" is performed
10 (when it is performed at all) by the brokers themselves (or their advertisers) and not by
11 FSG or anyone else on FSG's behalf.

12 39. Although the advertising broker may allow its advertisers to choose which
13 specific country their advertisements are displayed, that process, if it takes place at all,
14 happens before the broker places the advertisements on Avgle.com and without any input
15 from FSG or anyone on FSG's behalf.

16 40. The process for "interest-based targeting" of advertisements is completely
17 in the control of the brokers and their advertisers.

18 41. The geolocation/geo-targeting and interest-based targeting of
19 advertisements mentioned herein are not advertisements of Avgle.com, but rather they
20 are advertisements promoting the products or services of the advertisers themselves.
21 Advertisements that appear on Avgle.com link to third-party websites.

1 42. In other words, FSG is not advertising Avgle.com into the United States (or
2 Washington) by virtue of these advertisements.

3 43. In fact, Avgle.com is not advertised at all – whether within the United
4 States or elsewhere.

5 44. Although Avgle.com has an option available on the website which allows
6 for direct advertisement inquiries, Avgle.com has only reached advertising agreements
7 with two clients with this method, and both advertisers were located in China and had no
8 ties to the United States that FSG is aware of.

9 45. FSG does not have any contractual relationships with StackPath, LLC,
10 Multi Media LLC, Abudantia LLC, Mile High Glass Pipes, or Google Display Network
11 Ads. I believe that StackPath LLC is used by JuicyAds for DDoS protection, but FSG
12 has no relationship, contractual or otherwise, with this entity.

13 | Users of Avgle.com

46. Avgle.com has visitors from over 200 distinct countries around the world.

15 47. From the period of April 1, 2020 to June 30, 2020 (the “Time Period”),
16 according to histats.com, which is a website visitor analytics service which Avgle.com
17 utilizes, only approximately 6.00% of the user traffic of Avgle.com came from the United
18 States, and only 0.11% of the user traffic comes from Washington. Attached hereto as
19 Exhibit 1 is a true and correct sampling of data gathered through histats.com from
20 January 2020 through November 2020 showing the number of users from countries
21 around the world for Avgle.com’s website. Attached hereto as Exhibit 2 is true and

1 correct sampling of data gathered through histats.com from January 2020 through
2 November 2020 showing the number of users from individual U.S. States.

3 48. As you can see from these statistics, during the Time Period, only 6.00% of
4 users came from the United States. Indeed, more Avgle.com users came from Japan
5 (49.79%), Taiwan (13.75%), and Hong Kong (8.75%) during the Time Period.

6 49. This means that approximately 94% of Avgle.com users of came from
7 outside the United States during this Time Period.

8 50. Moreover, only .11% of total users to Avgle.com comes from Washington
9 during the Time Period, which makes up less than 2% of the total users of the United
10 States.

11 51. Users of Avgle.com do not need to create an account, register, or sign in to
12 view videos on Avgle.com.

13 52. To sign up for an account, a user does not need to verify what country they
14 are visiting from. Rather, a user needs to create a username and password, submit an email
15 address, and certify that he or she is at least 18 years old.

16 | Miscellaneous

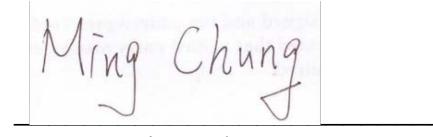
17 || 53. FSG is adequately capitalized.

18 54. It would be extremely burdensome and costly for representatives of FSG to
19 travel to Washington for trial or other proceedings in this case.

1 I declare under penalty of perjury that the foregoing facts are true and correct.
2
3

4 Executed on December 22, 2020 at
5
6

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
For and on behalf of
FELLOW SHINE GROUP LIMITED
福耀集團有限公司
.....
Ming Chung
.....
Authorized Signature(s)



Name: Ming Chung Wu
Title: Director